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To: American Atr,Microsoft ATR,ASKDOJ,president@whiteh...
Date: 1/25/02 5:08pm
Subject: A washingtonpost.com article from leederone1@yahoo.com

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Group Faults Disclosure of Microsoft's Lobbying

By Jonathan Krim

Microsoft Corp. and the Justice Department failed to make key public disclosures in connection with their proposed settlement in the company's antitrust case, an organization of antitrust lawyers and academics has charged.

In a complaint filed yesterday with the federal judge handling the case, the American Antitrust Institute said Microsoft did not adequately report its lobbying activities about the agreement, as required by the federal law that governs antitrust settlements.

Microsoft reported no conversations or contacts with members of the Bush administration about the agreement, except between lawyers who negotiated the deal, which are permitted. The disclosure law is designed to reveal any improper political pressure that might be exerted on the Justice Department on behalf of a company involved in legal action.

Microsoft's report surprised many consumer groups and Microsoft opponents, who have watched the software giant spend upwards of \$5 million a year on lobbying in Washington. In particular, Microsoft did not disclose any congressional lobbying in connection with the agreement. The company has said it is following precedent in other cases, in which only contacts with the executive branch have been reported under the law, known as the Tunney Act.

The antitrust institute, which opposes the settlement, believes this interpretation violates the law, and hopes the judge will enforce it now.

"The Tunney Act is supposed to be a meaningful statute, providing meaningful disclosures that will inform the public so that it can fully evaluate an antitrust settlement," said Albert A. Foer, president of the organization. "In this, the most important antitrust case of our generation, it is essential that the process be adhered to with care and commitment."

Microsoft spokesman Vivek Varma said the company's lobbying disclosure complies with the law and "we are looking forward to court review of the settlement."

But late yesterday the author of the law, former senator John V. Tunney (D-Calif.), filed an affidavit with the Justice Department saying Microsoft's disclosure violates the intent and letter of the act.

"Congress meant members of the Executive, Legislative, and Judicial branches of government," wrote Tunney, now a lawyer in Los Angeles. "Congress specifically intended to cover communications by officers of a defendant corporation, lawyers of such corporation, lobbyists of such corporation, or anyone else acting on behalf of such corporate defendant. If I had not been satisfied this was the plain meaning of the statute, I, as the principal author of the legislation, would not have pressed the legislation through to final passage."

In addition to its concerns over the lobbying disclosure, the antitrust institute argues that the Justice Department failed to adequately explain why it limited the agreement to certain sanctions and rejected others that had been pursued by prosecutors in the Clinton administration.

Foer said the judge should not rule on whether the agreement is in the public interest until Microsoft and the Justice Department comply with the disclosure provisions. He also said the judge should extend the period for public comment.

Microsoft questioned the motives of the institute, saying it has received contributions from Oracle Corp., a Microsoft rival. Foer said Oracle does not influence policy at the institute and is merely one of many companies and organizations that have contributed small sums to it pay its bills.

The Justice Department declined to comment on the institute's complaint, which was part of a flurry of activity as the long-running Microsoft case enters a new and more complex phase.

The 60-day period for public comment on the proposed settlement is scheduled to end Monday, and both Microsoft and its rivals have been feverishly preparing their views for submission to the court.

Trade groups supported by each side have been attempting to generate grass-roots support. In one incident, a telemarketing firm representing pro-Microsoft forces accidentally called one of the leaders of an anti-Microsoft coalition.

Gauging public sentiment is difficult, however, because the Justice Department so far has declined to make the comments public. A department spokeswoman said past procedures dictate that all the comments must first be collected, and department responses drafted, before the material is submitted to the court and made public.

The Justice Department has until the end of February to respond to the comments. After that, it will be up to District Court Judge Colleen Kollar-Kotelly to rule on the settlement.

Meanwhile, however, she is scheduled to begin separate hearings on March 11 into whether tougher sanctions should be imposed on the company for violations of antitrust laws. Nine states and the District of Columbia balked at signing on to the federal settlement deal, and are pursuing the case on their own.

And this week, AOL Time Warner sued Microsoft directly, seeking damages for its Netscape subsidiary, which was found by courts to have been hurt by anti-competitive acts by Microsoft.

